

In the Matter of Certificate of Service No. E-482464
Issued to: RAMON BONIFACIO TORRES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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RAMON BONIFACIO TORRES

This appeal comes before me in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 5 August, 1949, Appellant was found guilty by an Examiner of the United States Coast Guard at Mobile, Alabama, on a charge of "misconduct" based upon one specification alleging, in substance, that on or about 25 July, 1947, while serving as Chief Cook on board the American SS RICHARD K. CALL, under authority of his duly issued certificate he aided and harbored a female stowaway, one Theresa Purcell, of Irish nationality, for the purpose of illegal entry into the United States; said stowaway having been found in Appellant's room aboard ship on the high seas.

Three other specifications of misconduct were also lodged against Appellant incident to his conduct while serving on the American SS AMERICAN EAGLE during November, 1947, but as the Examiner found the latter specifications were not proved, they are not material to a discussion of this appeal.

Appellant was fully informed as to the nature of the proceedings, the rights to which he was entitled, and the possible consequences. He voluntarily waived his right to representation by counsel of his own selection; and entered a plea of "not guilty" to the charge and each specification.

Thereupon, the Investigating Officer introduced three documentary exhibits in evidence, viz., an abstract of proceedings before the United States District Court for the Eastern District of Virginia, and two certified excerpts from the log of the SS RICHARD K. CALL and the SS AMERICAN EAGLE.

In defense, Appellant testified as the only witness in his own behalf. As neither party desired to submit proposed Findings of Fact and Conclusions, the Examiner made his own findings and concluded the charge and first specification had been proved. An order was thereupon entered, revoking Appellant's Certificate of Service No. E-482464, and all other licenses, certificates and documents issued to him for service as an American merchant seaman.

From that order, this appeal has been taken; and it is urged that clemency be extended because of the great hardship which will befall Appellant's wife and young daughter if he is deprived of an opportunity to earn money for their support by going to sea.

Based upon my examination of this Record, I hereby make the following

FINDINGS OF FACT

On or about 25 July, 1947, Appellant was serving as a member of the crew in the capacity of Chief Cook on board the American SS RICHARD K. CALL, under authority of Certificate of Service No. E-482464, while said vessel was at sea. At 0900 on said date, the Chief Officer made a routine inspection of the vessel and found a female stowaway, Theresa Purcell, of Irish nationality, in Appellant's quarters.

Appellant had met this girl when the vessel was in Dublin, Ireland; but had not brought her aboard the vessel; nor did he know of her presence there until she presented herself to him about three days before she was discovered by the Chief Officer. Appellant had announced his intention to take the girl to the Master, but she threatened to jump over the side if he took such action. Believing that he would be in greater trouble if she did carry out her threat, Appellant did not report her presence to the Master before she was found by the Chief Officer.

On 16 September, 1947, Appellant appeared with counsel in the United States District Court at Norfolk, Virginia, and entered a plea of "guilty" to a criminal Information charging him with violation of Title 18 United States Code 470, which prohibits aiding and abetting a stowaway on vessels of the United States. The Court sentenced Appellant to serve a period of imprisonment for forty-five (45) days; and allowed him credit for the same period which he served while awaiting trial.

OPINION

It will have been noted that the specification before me is much broader, and includes a more serious offense than the Information to which Appellant pleaded "guilty" in the Federal Court. The Information was res judicata with respect to the matters therein recited; but it is not res judicata respecting other offenses, and particularly that portion of the specification alleging a "purpose of illegal entry into the United States." Therefore, that phrase in the specification was erroneously found "proved."

However, there is substantial evidence present in the record to show that Appellant did "abet and harbor" the stowaway; and that he failed to report her presence on board until she was discovered by the Chief Officer. This brings the case within the familiar practice that the specification was "proved in part"; and the part which has been proved establishes Appellant's misconduct.

It is not essential to my determination that his conduct may or may not have been in violation

of any statute; it is sufficient that I find Appellant's conduct was not conducive to the maintenance of shipboard discipline and safety of life.

No technical or legal problem has been raised on this appeal; but, since the statute under which I review these cases authorizes me to "alter or modify any finding," I state my

CONCLUSION

The charge of "misconduct" is proved by the evidence and testimony that Appellant aided and harbored the stowaway on the SS RICHARD K. CALL.

ORDER

The order of the Examiner dated 5 August, 1949, is MODIFIED to vacate that part which revokes Appellant's certificate, and shall provide for suspension of Appellant's Certificate of Service No. E-482464 for the period of six (6) months from 5 August, 1949. As so MODIFIED, said order is AFFIRMED.

MERLIN O'NEILL
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 9th day of January, 1950.